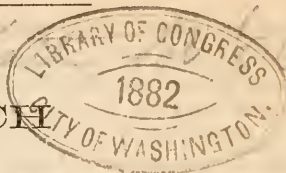


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INSURGENT RELATIONS AND INSURGENT ANIMUS.

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A SPEECH

BY

MR. DEMING, OF CONNECTICUT,

ON THE

PRESIDENT'S MESSAGE,

*Delivered in Committee of the Whole on the State of the Union,
January 19, 1866.*

Being in the Committee of the Whole on the state of the Union, MR. DEMING rose and said—

Mr. CHAIRMAN, I propose to submit some remarks to the committee pertinent to that paragraph of the President's message wherein he wisely refers to the House the question of the readmission of members from the insurrectionary district, and I submit them now because they will serve to vindicate votes upon questions of this nature which we have already passed upon when no opportunity for explanation was afforded, and because, also, they will vindicate the opinions which will guide me when similar cases shall hereafter be presented. I had hoped, in reply to the resolution offered by my colleague, [Mr. Brandegee,] that we should have been furnished ere this with copies of the laws and ordinances which have recently been enacted by popular conventions and provisional legislatures in the enemy's country, that our judgments might have been enlightened upon the important part of reconstruction which has been graciously submitted to the wisdom of Congress.

In the absence, however, of such valuable aid, I must govern myself by the principles which have hitherto uniformly guided the executive department in administering the reclamations of its sword, and by such sifted and uninflamatory facts as the powers that be, with a considerate regard for the public health, permit to dribble out from official channels of intelligence.

If we had been engaged in a war with England for the last four years, the legal effect and liabilities of such a conflict upon the two parties would have been clear and unmistakable, for the legal relations of two nations belligerent to each other, as well as the legal relations of their respective inhabitants, are as fully and accurately defined by the law of nations as the relations of landlord and tenant or grantor and grantee are by the municipal law.

As respects the nations, a war instantly annuls the most solemn compacts and treaties, and destroys all the claims of one belligerent upon another, except those which may be sanctioned by a treaty of peace. As respects the citizens of the two nations, it instantly converts all of them into a state of enmity to each other in utter contempt even of their own *animus* or predilections; so that in the case supposed—a war with England—Cobden, were he alive, and John Bright and John Stuart Mill and Thomas Hughes, however

[Marked J. L. P. 3860]

much they might oppose the war, and however amicable they were to this country, would be, in the eye of the law, our enemies just as much as the cabinet ministers who advised it, and the generals, admirals, soldiers, and sailors who were carrying it on. The first blast of war would immediately render unlawful all intercourse, commercial or otherwise, between the people of the two countries. Contracts which were in existence at the commencement of the war would be suspended, and those entered into during its continuance void. The insurance of enemies' property, the drawing of bills of exchange or purchase on the enemy's country, the remission of bills or money to it would be illegal and null. Existing partnerships between the citizens and subjects would be dissolved, and all trade and intercourse, direct or indirect, would be completely and absolutely interdicted by the mere force and effect of the war itself. All the property of the people of the two countries on land and sea would be liable to confiscation and capture, with certain qualifications as to property on land, and all debts interchangeably due would be liable to forfeiture at the discretion of the respective Governments. (Judge Nelson in Prize case, 2 Black.)

Now, there is one fact which, in all the fog and bewilderment which surrounds present issues, looms out in prominent and startling relief. We have been for the last four years "in a state of war;" not, it is true, against any foreign nation, but against certain States which once owed allegiance to this Government and afterward confederated together for its destruction; and the existence of this "state of war," with a full knowledge of the legal meaning of that phrase, and of the legal consequences which attach to that state, has been repeatedly recognized both by the legitimate and revolutionary governments, and by all their departments; by the two executives, in levying and marshaling armies, and hurling them together with all the implements and agencies of destruction; by establishing a blockade and issuing letters-of-marque by virtue, and by virtue only, of a cessation of peaceful relations; by both Congresses in solemn and deliberate enactment tantamount to declarations of war, as by the act of confederate congress, at Montgomery, of May 6, 1861, entitled "An act recognizing a state of war," as by the act of this Congress of July 13, 1861, generally known as the non-intercourse act; recognized by the full play and operation, with all their machinery for confiscation and forfeiture, of the courts of prize, in abeyance during peace and only liberated and set in motion by the inexorable necessities of war; recognized by foreign nations, which have conceded full belligerent rights to each party to the contest; recognized, finally, by the highest arbiter of conflict between the State and Federal authority known to our system, the Supreme Court of the United States, which, by the voice of all its judges, has unanimously declared that from the 13th day of July, 1861, "a civil territorial war has existed between the United States and the confederate States." And this war, the same august tribunal declares, commenced in no tumultuous and unorganized insurrection, but was organized by body-politics calling themselves States, claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. As States they seized national forts, arsenals, custom-houses, navy-yards, post offices within their boundaries; as States they extinguished every Pharos upon their coasts; as States they raised armies, levied taxes, loaned their credit, and issued bonds for supporting the war; as States they adopted a new constitution and confederated together into a hostile government, claiming to be sovereign and independent, and waged, to sustain the claim, and secure its recognition by the world, a war so vast in its proportions, so terrible in its destruction of life, so appalling in its barbarities, so damnable in the monstrous horrors which

it conceived and executed, that all the nations from "China to Peru" stand aghast, as crash after crash of such awful thunder reaches their affrighted ears. Now, how does this war, in such frightful terrors clad, and so notorious, organized by States claiming to be sovereign, and waged by those States united into a government claiming to be independent, differ from a foreign war in the belligerent rights which it bestows upon us and in the legal consequences which it entails upon our enemies? It differs but in one essential particular. A civil war, as absolutely as a war *inter gentes*, confers upon the parties to it full belligerent rights and the corresponding liabilities of a perfect war.

Need I, to substantiate this position, appeal to those great public jurists whose weighty maxims are the imperial rescripts of the international code? Need I summon here Grotius, himself a refugee from civil war, the founder of these imperishable statutes, which, as by an elemental force, hold warring nations from rushing madly from their spheres into the chaos and darkness of utter barbarism, to say—

"That a civil war between members of the same society is a mixed war, public on the side of the Government, but private on the part of the people resisting authority; yet such a war entitles both belligerent parties to full belligerent rights."

Need I summon one to whom public law is scarcely less indebted, but who wrote a century later, that Vattel may reiterate with more precision that—

"A civil war breaks the bands of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. These two parties, therefore, must necessarily be considered as constituting, at least for a time, two distinct societies."

Need I appeal to Riquelme, who declares that—

"When a part of the State takes up arms against the Government, if it is sufficiently strong to resist its action, and to constitute two parties of equally balanced forces, the existence of civil war is thenceforward determined. If the conspirators against the Government have not the means of assuming this position, their movement does not pass beyond a rebellion. As true civil war breaks the bonds of society, by dividing it in fact into two independent societies, it is for this consideration that we treat of it in international law, since each party forming as it were a separate nation, both should be regarded as subject to the laws of war. This subjection to the law of nations is the more necessary in civil wars, since these, by nourishing more hatred and resentments than foreign wars, require more the corrective of the law of nations in order to moderate their ravages."

Need I call upon Bello, who says:

"When a faction is formed in a State, which takes up arms against the sovereign, in order to wrest from him the supreme power, or impose conditions on him; or when a republic is divided into two parties which mutually treat each other as enemies, this war is called a civil war, which means war between fellow-citizens. Civil wars frequently commence by popular tumults which in nowise concern foreign nations; but when one faction or party obtains dominion over an extensive territory, gives laws to it, establishes a government in it, administers justice, and, in a word, exercises acts of sovereignty, it is a person in the law of nations; and the foreign powers which desire to maintain their neutrality ought to consider both as two States, independent as respects one another and other States, and who recognize no judge of their differences."

Or, in order to define more precisely the great and pervading change which has been produced in the relation of the insurgent States and of all their citizens to this Government by the war which they have waged, need I quote the decision of the Supreme Court in the memorable prize cases, where, upon a point raised, it is expressly affirmed that all within the hostile territory "are public enemies and liable to be treated as such;" that the United States may exercise full belligerent rights, and that to the antagonist party all the legal liabilities and consequences of war necessarily attach; the sole element of distinction, according to the court, between the legal effects of a civil war

and the legal effects of a foreign war, being, that in the former the party claiming to be sovereign may exercise full belligerent as well as sovereign rights? Or need I, finally, to corroborate this position, cite the uniform action of the executive department, which, since hostilities commenced, has pursued the enemy with invasion, blockades, armies, fleets, sequestration, conscription, military commission, courts-martial, by virtue of its claim to full belligerent rights; which has received from them flags of truce, granted to them paroles, passports, and safe-conducts, and negotiated terms for a general surrender in deference to their possession of belligerent rights; and which, since their military power has been broken, has ruled them by military governors, dictated conditions of permanent peace, superseded laws and municipal elections, suspended Governors elected by themselves, arrested the judgments of their local courts, and administered their local affairs in a thousand ways which would be utterly without justification unless it was abundantly justified by the laws of war, and without vindication under the Constitution, unless it was abundantly vindicated by that construction of it for which I am here contending?

Now, if I am right in the position which I have assumed, that the "civil territorial war" in which we have been involved differs in none of its legal effects (except in the particular which I have indicated) from a foreign war, then we are able to define with precise accuracy the legal relation of the insurgent States and their citizens to this Government since they first appealed to wage of battle.

Up to the time their military power was broken by the universal surrender of their armies and the universal trailing of their unhonored flag, the States were hostile States, and their citizens "public enemies," with belligerent rights and belligerent rights only, entitled to claim no benefit from laws or Constitution, whether that Constitution be called a compact, a treaty, or a covenant, or whether the parties to it were States in their sovereign capacity, or the people of the United States as individuals. And since the surrender the legal relation both of the States and individuals has been that of vanquished enemies, with their lives, property, and political system absolutely at the mercy of the conqueror.

Having thus tried these States by the accredited maxims of public law for the purpose of ascertaining their precise legal relations to the Government they have conspired to destroy, I was intending here to apply to the insurgent eleven the touch-stone of the Constitution, and see what powers it confers upon States as States, what rights it secures to States as States, and what duties and obligations it enjoins as essential, inevitable, and necessary equivalents upon States as States, for the purpose of deducing the comforting conclusion that a State under the Constitution has no rights, and can exercise no power which discharges no duty and spurns every obligation. But this proposition has been so ably discussed by the gentleman from Ohio [Mr. Shellabarger] that I am willing to leave the dogma, that organized rebellions are States, just where he left it, sprawling and writhing under the blows of such a battle-ax as Cœur de Lion dropped on the head of the infidel.

MR. ELDRIDGE. Will the gentleman allow me to ask him a question at this point?

MR. DEMING. I would inform the gentleman from Wisconsin that I have not so thoroughly got the hang of this school-house at present that I can consent to interruptions. As I am speaking without notes or brief, I tell him frankly that I cannot have my concatenation disturbed by interruptions. [Laughter.]

Although this is the theory which I have uniformly maintained here and elsewhere respecting the nature of this rebellion, and although I do not believe that these van-

quished enemies and "organized rebellions" have any reason for claiming that mitigation of the extreme rights of war which are accorded by modern usage to those who think they are waging a just war, yet I deprecate and most emphatically disclaim any desire or purpose to apply to their case the *strictissimum jus* or rigid rule of international law.

But I do intend fairly, squarely, and firmly to plant myself, in deciding the momentous issues before us, upon the milder interpretation of the rights of conquest, conceded now by every publicist and vindicated by all the wars of history, that we have the right, as victors, to impose any terms upon the vanquished which are necessary for the future security of the Republic and for enforcing and redeeming all the pledges of public faith which the Government has given as the price of victory. I shall insist that "organized rebellions," called by courtesy "States," shall not resume their former rights without "irreversible guaranties" to national security and national honor. I shall insist that we have the right, both as victors on the one hand and as legislators on the other, to exclude them from the Congress of the United States until the repetition of the secession experiment is placed beyond a peradventure, and no vote from any of these vanquished enemies shall, by my consent, endanger the public faith until that precious jewel is imbedded in the imperishable buttresses of the Constitution.

I am now prepared to declare with precision, but with brevity, what the national security and public faith, in my judgment, require as conditions precedent to the readmission to the public councils of "public enemies" from States who for more than four years have deliberately divested themselves of every legal idea of a State as defined by public law, and of all the elements of a State which the Constitution of the United States enjoins them to possess and maintain.

It requires, first, that the Government shall be absolutely protected from a repetition of the secession experiment by a provision in our organic law; second, that the freedmen shall be secured an absolute equality with the white man before the civil and criminal law, and shall be endowed with every political right necessary to maintain that equality; third, that the public creditor shall be protected, as completely as organic law can protect him, from any repudiation or scaling down of the public debt; fourth, that the citizens, both of the rebel and loyal States, shall be protected, as completely as organic law can protect them, from any taxation, direct or indirect, for the payment of the rebel debt; and unless the equality of the freedmen before both civil and criminal law can be fortified by legislation here, under the second clause of the amendment to the Constitution, giving universal freedom to the slave, we shall require, fifth, an amendment similar to that introduced by my distinguished friend from Ohio, [Mr. Bingham,]—

"That Congress shall have power to make all laws necessary and proper to secure to all persons in every State equal protection in their rights of life, liberty, and property."

Much more than this we might rightfully demand; much more than this we might reasonably claim; but not a jot less can we fail to secure as conditions precedent to the readmission of these "public enemies" to the public councils without being guilty of treachery to the living, to the dead, and to those who are yet to be.

Having thus defined the relation of these insurgent States to the Government according to public law and the Constitution, and indicated the "irreversible guaranties" which are required, I wish to address myself for a moment to the spirit, temper, *animus* of these "public enemies" at the present time, and to ask what security have we that the indispensable prerequisites of national safety and national faith which I have enumerated

would not be exposed to imminent peril by the presence here of the Representatives of those men who, when the grass on these surrounding hills, which is now but just withered, was but just green, were pursuing us with the sword, with the fire-brand, with pestilence, massacre, and slow starvation, and on that wild and awful night in the kalends of April—but I forbear; the wedding follows so close upon the funeral that

“The funeral baked meats
Might coldly furnish forth the marriage tables.”

We are here, in the full gaze of the nation and the civilized world, charged with the future grandeur and renown of the Republic. We are here fairly coining and molding the rising eras and ages of a continent. We are here attempting to save an empire from being mortally wounded by that ball which has hardly yet spent its force, and which these new converts sped at its head when in their now regenerate bosoms burned all the concentrated flames of hell. We are here, having just rescued the Government from death on the field of honor, attempting to save it from the death of infamy which would follow its perfidy to the freedman who fought its battles and to the creditor who purchased its bonds. And when here, under such oppressive responsibilities to the present and the future, to the living and the dead, we ask, earnestly ask, like tortured Ajax begging for light, what proof—strong, convincing, overwhelming, as the enormous improbability of the supposition requires—do you present that these red-handed rebels can safely participate with us in launching the now enfranchised Republic on its dazzling orbit of justice, probity, and freedom, we are forthwith answered by a flux of glittering generalities, which are no more proofs of loyalty than the dogged submission of the assassin Payne to his fate was proof of loyalty. “They accept the situation;” so did Payne. “They submit to necessity;” so did Payne. “The aspect of affairs is more promising than could have been expected;” so it was in Payne’s case—it was supposed he would kick and bite the executioner. “An abiding faith is entertained that their actions will conform to their professions;” that must be faith like Tertullian’s, who said, “*Credo quia impossibile est.*”

I see by the northern papers that some reverend gentlemen have been transcendently weak enough to bless God “for having converted the southern heart to loyalty.” If this be so, St. Paul’s conversion was rather a tame affair. If it be true that these fire-eating, blood-thirsty Southrons, whose untamed insubordination, whose furious and vindictive passions, were the proverb and shame of our past, have been suddenly born again, then the day of Pentecost met with an eclipse which amounts to a total obscuration, and the epistles of Andrew have worked a greater miracle than the preaching of Peter.

Why, Mr. Chairman, we all know that hypocrisy is not one of the vices of southern character. There is no loyalty there which would support what I regard, or what the least exacting Union man should regard, as indispensable to the present and future safety of this imperrilled nation. That most acute and patient observer of the southern *animus*, General Carl Shurz, commissioned by the President to examine this very question, in the condensed essence and summing up of his most valuable report says;

“The loyalty of the masses and most of the leaders of the southern people, consists in submission to necessity. There is, except in individual instances, an entire absence of that national spirit which forms the basis of true loyalty and patriotism.

“The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up. But although the freedman is no longer considered the property of the individual master, he is considered the slave of society, and all inde-

pendent State legislation will share the tendency to make him such. The ordinances abolishing slavery passed by the conventions under the pressure of circumstances, will not be looked upon as barring the establishment of a new form of servitude."

This is the final exhibit of the keen observer deputed by the President to examine upon the spot the condition of the insurgent States.

Sir, their conversion consists in bowing their still stubborn necks to a power which they could no longer withstand, and the instrument of it was the sword of Ulysses. Their penitence consists in discovering that they have committed a blunder.

When the Administration of Abraham Lincoln was inaugurated two alternatives were before them. They could have staid here, fighting the Government from the inside as they had done for the last thirty years, and while warmed in its too gentle and forbearing bosom, marking it for slaughter and measuring it for the grave. They could have gone out and attempted an assault upon it from the outside. They chose the latter. They raised their bloody hands in rebellion; and had no sooner done so than they found themselves confronted with the most puissant military Power which the world has ever seen when begirt for war, and when it had summoned its children for battle.

They went down with their short-lived banner in the dust of humiliation and defeat. And if there is any truth in this inspection of the southern *animus*, which has been laid before the country, they are, like a wily and discomfited enemy, watching the chance to steal back and adopt the other alternative, and strangle the Government here in the very sanctuary of its power and majesty. "O! doubter and gainsayer," I hear some ardent friend of readmission ask, "Have they not repealed the secession ordinances? Have they not adopted the amendment to the Constitution and repudiated the rebel debt?" O, yes, with a command of countenance and solemnity of visage which, under the circumstances, is truly marvelous, they have told all the beads, repeated all the aves, and pattered all the prayers enjoined upon them as a condition of absolution, but it is within the limits of possibility that they have done all this to purchase unlimited indulgence to sin; and not to be invidious in comparisons, I am told that Italian brigands are never so devout in kneelings, crossings, and pater-nosters as when they are about to plunge afresh into crime.

They have ratified the amendment to the Constitution, have they? But how have they ratified it? With a construction and gloss upon it which is more trumpet-tongued proof of their perennial perfidy to the black race than all the hypocritical mouthings of acquiescence in emancipation which could be collected in a six-month's hunt from Richmond to the Rio Grande. They have ratified it with a construction that it merely abolishes the infamy of buying, selling, and owning human beings; and under the exceptional clause ("except as a punishment for crime") reconstructed North Carolina is now selling black men into slavery for petty larceny, and reconstructed South Carolina, Mississippi, and Louisiana, are fettering the contract system with so many subtle formalities, forfeitures, and conditions, that a modern labor contract is much like an old-fashioned slave-pen—a trap to hold the freedman to his work and cheat him of his wages. It is also true that in equivocal and guarded language they have repealed the secession ordinance and repudiated the rebel debt. But who can have faith in a generation of vipers? The next Legislature may re-enact secession and reaffirm the debt, and I am determined for one to accept no bonds for their good behavior which they are at liberty either to cancel or steal. But the oaths! the oaths! They have sworn oaths to be faithful to the Constitution and to support the laws. Yes, my friend, they have piled Pelion upon Ossa in the shape of oaths; but, alas! they have taken all these oaths before, and on the



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top of them taken perjury upon their souls; and those who have perjured Senators and Representatives, their perjured officers, military, naval, and civil, their perjured judges, and their perjured curs of low degree, rushing from the Bible which they had kissed to the rebel congress and the confederate camp, will require more "irreversible guaranties" from the returning prodigals than those which end with "so help me God!" Confidence is said to be a plant of slow growth, and if there is any kind of confidence which should be longer than the American aloe in blossoming, it is confidence in any oath which these convicted oath-breakers can take.

I have pursued this investigation thus far into the *animus* of the inhabitants of the disfranchised States by the intuitions of common sense, with the expectation that this process would guide us at least to the conclusion that the burden of proof in this case rests most signally upon those who claim that they are ripe for our embrace and for the immediate readmission of their Representatives to this floor. I was intending next to adopt a more systematic method of inquiry with the hope of showing that the intuitions of common sense and the process of inductive investigation mutually fortify and vindicate the same general conclusions. I was intending to examine the southern *animus* as evinced, first, by their general, local, and municipal elections; second, by the laws and ordinances which they have passed respecting the freedmen; third, by the testimony of the special agent appointed by the President to investigate their loyalty; fourth, by correspondence from the infected region; and, fifth, by the statements of loyal citizens from the renovated States; and I affirm that from all these distinct and independent sources of information the evidence is complete and overwhelming that southern loyalty consists in submission to necessity, and that its implacable animosity to the Federal Government, and to those great measures which have been inaugurated for liberating and enfranchising the slave, is merely biding the time when, by the return to these Halls of its full complement of Senators and Representatives, the misfortunes of the field may be redeemed in the forum. But as the whole body of laws and ordinances have not yet reached us, the materials for an exhaustive examination are not yet complete, and I must defer to some future period of the debate the results of such an investigation. I can assure gentlemen that when the conclusions drawn from such an examination are brought to the intelligence and conscience of the North, no man can live who votes for the unconditional admission of these unregenerate and implacable foes to any participation in our legislation here. I am thankful that my feeble voice has been permitted at this early day to sound the alarm.

I have thus, Mr. Chairman, defined my view of the relation of these insurgent States, as determined by public law and by the Constitution, to this Government. I have indicated without vindicating the constitutional muniments which will be required to defend the cause we have won when "public enemies" shall be joined with us in executing our sacred trust. I have searched in vain for the refreshing fount of patriotism which we are told has recently burst forth in those once desolate wastes. In doing this I have stated some of the principles which will govern me in this momentous crisis of my country's history. Guided by them, I shall enter the dark and pretentious cloud which is still lowering before us without fear, with great hope, but with no certainty. Upon the God of nations and the invincible strength of northern freemen we must still rely to make our deliverance sure.

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